



February 26, 2002

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2002-0910

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159026.

The Comptroller of Public Accounts (the "comptroller") received a request for "the contact information of the companies or individuals who provided non-mandatory letters of intent or questions" in response to Request-for-Proposals 103d and 131a, pertaining to services for the Texas Prepaid Higher Education Tuition Board. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

In this case, you argue that "the contracts have not yet been awarded in these two bidding situations. Proposers may submit additional information and could tailor their responses, depending on who their other competitors are in these two situations. Releasing to the public the identities at this time would provide proposers a competitive advantage." We note, however, that the information at issue here pertains to the identities of companies or

individuals that submitted what you describe as "questions or non-mandatory letters of intent." The list of companies or individuals at issue, therefore, is made up only of entities that were not bound to submit a proposal, and who thus could not yet be termed "competitors" for the bid.¹ Accordingly, as the identities of the actual competitors for the contracts cannot be determined from the requested information, and as the comptroller has not demonstrated a substantial likelihood that these entities will submit bids, we are not persuaded that the competitive harm you complain of would result from release of the requested information. Cf. Open Records Decision No. 453 (1986) (identities of persons who received bid packets on sale of land not excepted under predecessor to section 552.104, where there was no showing of substantial likelihood that people who received bid packets for prior land sale would bid for tracts when they were reoffered for sale; most that was asserted was that bidders "may" submit new bids at next sale), 46 (1974) (finding that knowledge of identity of numerous potential bidders for requested commodity class is not information which, if released, would give advantage to competitors or bidders). Thus, you may not withhold the requested information under section 552.104. As you raise no other exceptions to disclosure, the information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

¹Indeed, we note that the document you provided for our review entitled "Request for Proposals for Investment Consulting Services for the Texas Prepaid Higher Education Tuition Board," dated November 30, 2001, states, in part: "[a]ll potential respondents may submit a non-mandatory and non-binding Letter of Intent to Propose The Letter of Intent must identify the specific entity . . . that *may* submit a proposal in response to this RFP *Submission of a Letter of Intent does not obligate a potential respondent to submit a proposal.*" [Emphasis added].

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 159026

Enc. Submitted documents

c: Mr. Raul A. Canez
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(w/o enclosures)